

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

Plaintiff,

v.

LIBERTY PROPERTY LIMITED
PARTNERSHIP AND LIBERTY PROPERTY
TRUST

Defendants.

Civil Action No. _____

COMPLAINT

Plaintiff, the United States of America ("United States"), by authority of the Attorney General and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this complaint and alleges as follows:

NATURE OF THE ACTION

1. This is a civil action under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), as amended, 42 U.S.C. §§ 9606 and 9607, for injunctive relief and recovery of response costs incurred by the United States in connection with the Crater Resources, Inc. Superfund Site located in Upper Merion Township, Montgomery County, Pennsylvania. The United States also seeks a declaratory judgment, pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), and 28 U.S.C. § 2201 on the Defendants' liability for future response costs that will be binding in any subsequent action or actions to recover further response costs incurred by the United States.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action and the parties hereto pursuant to 28 U.S.C. § 1345 and 42 U.S.C. § 9613(b).

3. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and 42 U.S.C. § 9613(b) because the releases of hazardous substances giving rise to the claim occurred in this district and the Site is located in this district.

DEFENDANTS

4. Defendant Liberty Property Limited Partnership is a Pennsylvania Limited Partnership, and its sole general partner, Liberty Property Trust, is a Maryland Real Estate Investment Trust, (referred to collectively herein as “Liberty”).

5. Liberty is the current owner and operator of a portion of the Site.

GENERAL ALLEGATIONS

Site Description and Background

6. The Crater Resources, Inc. Superfund Site (“Site”) is located approximately one mile north of Gulph Mills, Pennsylvania, a suburb northwest of Philadelphia, in Upper Merion Township, Montgomery County, Pennsylvania.

7. The Site consists of four inactive quarries (Quarry 1, 2, 3 and 4) on approximately 50 acres of undeveloped land contaminated from the disposal of Waste Ammonia Liquor (“WAL”) produced by coking operations conducted by the Alan Wood Companies.

8. Soils in the quarries and groundwater at the Site are contaminated with a number of hazardous substances, including benzene, metals (cyanide, arsenic, lead and mercury), toluene, phenolic compounds (4-methylphenol), polycyclic aromatic hydrocarbons ("PAHs") and other volatile organic compounds.

9. EPA found Volatile Organic Aromatics ("VOAs") and Base Neutral Extractable Compounds ("BNAs") in the Philadelphia Suburban Water Company's test well and trans-1, 2-dichloroethylene in the Upper Merion Reservoir, a public drinking water source also operated by the Philadelphia Suburban Water Company and located approximately one mile from the Site.

10. EPA placed the Site on the National Priorities List ("NPL") on October 14, 1992, pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605. The NPL, codified at 40 C.F.R. Part 300, Appendix B, has been promulgated pursuant to Section 105(a)(8)(B) of CERCLA, 42 U.S.C. § 9605(a)(8)(B).

11. Beazer East, Inc., Keystone Coke Company, Inc., and Vesper Corporation (collectively, "Crater PRP Group") entered into an Administrative Order on Consent ("AOC") on September 17, 1994 for the performance of a Remedial Investigation/Feasibility Study to determine what cleanup is necessary at the Site.

12. EPA issued a Record of Decision ("ROD") for the Site on September 27, 2000, pursuant to 40 C.F.R. Part 300.430. The ROD documents EPA's selected remedy for the Site. The major components of the selected remedy include: removal of all contaminated soils and sediment in Quarry 3; construction of a cap to prevent unacceptable leaching of contaminants from Quarries 1, 2, 4 and other contaminated soil areas into the groundwater; monitored natural attenuation of the groundwater, with a contingent groundwater remedy; further investigation of the former WAL Pipeline; and institutional controls.

13. On April 30, 2001, EPA issued a Unilateral Administrative Order for the

Remedial Design and Remedial Action (“RD/RA UAO”) for the Site to Beazer East, Inc., Crater Resources, Inc., Each Parcel As Is Inc., Gulph Mills Golf Club, Inc., Keystone Coke Company, Inc., R-T Option Corporation, and Vesper Corporation (collectively, “UAO Respondents”) and to Liberty.

Relationship of Defendants to the Site

14. Liberty is currently the owner of a portion of the Site, including properties commonly referred to as: the Yellow Property (approximately 44.5 acres), the Pink Property (approximately 21 acres), and 300 Horizon Drive (approximately 7.31 acres). Portions of the Yellow Property, the Pink Property and 3000 Horizon Drive are part of the Site.

15. Liberty purchased the Yellow Property from RAGM Settlement Corporation (“RAGM”) in October 1998, the Pink Property from RAGM in December 1997, and 3000 Horizon Drive also from RAGM in April 1996.

16. Liberty is liable for cleanup and cost recovery pursuant to Sections 106(a) and 107(a)(1) of CERCLA, 42 U.S.C. §§ 9696(a) and 9607(a)(1).

CERCLA Liability

17. Liberty Property Limited Partnership is a “person” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

18. Liberty Property Limited Partnership is a “covered person” under Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

19. Liberty Property Trust is a “person” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

20. Liberty Property Trust is a “covered person” under Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

21. The substances contaminating the soil and groundwater at the Site, including benzene, metals, toluene, phenolic compounds and PAHs, are “hazardous substances” within the meaning of Sections 101(14), 101(22), 104(a) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(8), 9601(14), 9601(22), 9604(a), and 9607(a).

22. Hazardous substances were “disposed of” at the Site within the meaning of Sections 101(14), 101(29) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(14), 9601(29) and 9607(a).

23. There have been and continue to be “releases” or “threatened releases” of “hazardous substances” into the environment at and from the Site within the meaning of Sections 101(14), 101(22) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(14), 9601(22) and 9607(a).

**FIRST CLAIM FOR RELIEF
(Recovery of Response Costs)**

24. Paragraphs 1 through 23, inclusive, are realleged and incorporated herein by reference.

25. The United States has incurred and will continue to incur response costs, as defined in Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), and authorized by Section 104 of CERCLA, 42 U.S.C. § 9604, as a result of the release or threatened release of hazardous substances at the Site.

26. The response costs were incurred and will be incurred by the United States in a manner not inconsistent with the National Contingency Plan, 40 C.F.R. Part 300.

27. Liberty is liable for response costs incurred and to be incurred by the United States in connection with the Site, pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

28. The United States is entitled to a declaratory judgment on liability for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages, pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), and the Declaratory Judgment Act, 28 U.S.C. § 2201.

**SECOND CLAIM FOR RELIEF
(Injunctive Relief)**

29. Paragraphs 1 through 28, inclusive, are realleged and incorporated herein by reference.

30. The Regional Administrator of EPA, Region III, acting pursuant to his delegated authority, has determined that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of the actual and/or threatened releases of hazardous substances at and from the Site.

31. The United States is entitled to such relief from Liberty as may be necessary to abate the danger or threat to the public interest posed by the release or threatened release of hazardous substances at the Site, pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

PRAYER FOR RELIEF

Wherefore, the United States respectfully requests that this Court enter a judgment against Defendants as follows:

A. Order Liberty to pay all response costs incurred by the United States in response to the release or threat of release of hazardous substances at the Site;

B. Enter a declaratory judgment on liability against Liberty under Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), that will be binding in any subsequent action to recover further response costs or damages;

C. Order Liberty to perform the remedy at the Site selected in EPA's ROD dated September 27, 2000; and

D. Grant such other and further relief as the Court deems appropriate.

Respectfully Submitted,

FOR THE UNITED STATES OF AMERICA

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